

It's Groundhog Day: Massachusetts Legislature Again Proposes Comprehensive Noncompete Law

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The Massachusetts legislature is once again seeking to enact [comprehensive noncompetition legislation](#) to rein in the use, and some may argue the abuse, of restrictive covenants in employment agreements. Currently, noncompete agreements are examined by courts on a case-by-case basis under well-developed Massachusetts case law. This approach, however, has sometimes led to inconsistencies in the courts and unpredictable results.

Current Legislative Action

On April 17, 2018, the Massachusetts Joint Committee on Labor and Workforce Development introduced [House Bill 4419—An Act Relative to the Judicial Enforcement of Noncompetition Agreements](#). House Bill 4419 builds on house and senate bills introduced in prior years. Since 2009, multiple bills have been introduced in both the Massachusetts House of Representatives and Senate. A comprehensive bill gained significant traction in 2016 when both the house and senate passed noncompete legislation only to have it perish with the end of the legislative session.

House Bill 4419 shares many elements with the prior bills, and some of the key points of the newest bill include the following:

- It includes independent contractors under the definition of covered employees.
- It would impose limitations on the geographic scope and the temporal scope of noncompete agreements.
- The bill would require fair and reasonable consideration, in addition to continued employment, when noncompete agreements are entered into after employment has commenced.
- It would require employers to provide advance notice to prospective employees that entering into a noncompete agreement is a condition of employment.
- The bill would limit the scope of a noncompete agreement to be no broader than necessary to

protect the employer's legitimate business interests, including the employer's trade secrets, confidential information, and goodwill.

- It would prohibit enforcement of noncompete agreements against employees who are non-exempt under the Fair Labor Standards Act, a federal law that establishes among other things the minimum wage and overtime pay; undergraduate and graduate students engaged in short-term employment; employees who have been laid off or discharged without cause; and employees 18 years of age or younger.
- It would require "garden leave" without requiring a certain amount of consideration or period of payment and leave.
- It would prohibit choice of law arrangements designed to avoid rights guaranteed by the noncompete law.

Next Steps and Key Takeaways

House Bill 4419 is now before the Massachusetts House Committee on Steering, Policy and Scheduling. There are presently no scheduled committee hearings, and there is no predictable timetable for when (or if) the bill will escape the committee for a full vote by the house. If enacted, the bill would take effect on October 1, 2018. Stay tuned for further developments, as we will know by July 31, 2018, if this year's bill—in any form—will become law.

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